

July 23, 2007

Mr. Daniel L. Schwarz
Chief Deputy Yellowstone County Attorney
217 North 27th Street
P.O. Box 35025
Billings, MT 59107-5025

Re: Letter of Advice Request

Dear Mr. Schwarz:

You have requested an advisory letter from the Attorney General on the following issue: May a non-lawyer serve as a justice in a justice's court of record? Your question relates to legislation adopted by the Montana legislature in 2003 and 2005 enacting and amending laws authorizing the creation of a justice's court of record. There are no Montana cases interpreting these sections of the code, nor are there any Attorney General Opinions that address your question.

Historically, justices of the peace have not been required to be lawyers, nor have justice's courts been courts of record. See D. Mason and E. Kimball, Montana Justices' Courts--According to the Law, 23 Mont. L. Rev. 62 (1961). The justice's courts were constitutional courts under the 1889 Constitution, and the qualifications for justices of the peace were to be set by law. Mont. Const. art. VIII, § 1 (1889). Citizenship requirements were the principal qualifications under the law, however, and the situation remained the same through the 1972 Constitution, which also assigns control over these matters to the legislature. Mont. Const. art. VII, § 5 (1972); Mont. Code Ann. §§ 3-10-201 to -204 (2005); see also Rev. Codes Mont. 1947, § 93-704. The statutes now also require that justices of the peace receive specified training. Mont. Code Ann. § 3-10-203 (2005).

In 2003 the legislature passed legislation authorizing counties "to establish the justice's court as a court of record.." HB 358, codified at 2003 Mont. Laws, ch. 389. Section 10 of that bill, codified at Mont. Code Ann. § 3-10-117 (2003), set forth the qualifications for a justice in a justice's court of record, requiring justices of the peace in justice's courts of record to complete fifteen (15) hours of continuing judicial education and attend two annual training sessions. Mont. Code Ann. § 3-10-117 (2003). It did not require these justices to be lawyers. Compare that section to the qualifications section for district court

judges. Mont. Code Ann. § 3-5-202 (2005); see also Mont. Const. art. VII, § 9(1). It is plain that had the legislature wanted to require justices in justice's courts of record to be lawyers, they would have used language similar to that found in these provisions.

“In the construction of a statute, the office of the judge is simply to ascertain and declare what is in terms or in substance contained therein, *not to insert what has been omitted* or to omit what has been inserted.” Mont. Code Ann. § 1-2-101 (emphasis added). “When the statute is plain, unambiguous, direct and certain, the statute speaks for itself and there is no need to resort to extrinsic means of interpretation.” In re Marriage of Christian, 295 Mont. 352, 356, 983 P.2d 966, 968 (1999). There was no plain statutory provision in the 2003 legislation authorizing justice's courts of record requiring that justices be lawyers, and the law is not ambiguous on this point. There are other qualifications for justices in justice's courts of record, and this is not one of them. Mont. Code Ann. §§ 3-10-201 to -204 (2005).

It is true that the title of the bill that became 2003 Mont. Laws ch. 389 included language indicating that the bill would require justices in justice's courts of records to be lawyers by pegging their qualifications to those of municipal court judges. HB 358, 2003 Regular Session, Title (“An Act . . . Providing That the Qualifications and Training Requirements for a Justice of the Peace Serving in a Justice's Court of Record Are the Same as for a Municipal Court Judge”); cf. Mont. Code Ann. § 3-6-202(1) (2005) (“A municipal court judge must have the same qualifications as a judge of the district court. . . .”); Mont. Code Ann. § 3-5-202 (district court judge must have been admitted to practice law in Montana for five years prior to the date of appointment or election). However, that provision was amended out of the bill prior to its approval, and it is well-established that if the title of the bill conflicts with material found in the body of the bill the body of the bill controls. State ex rel. Jones v. Erickson, 75 Mont. 429, 453, 244 P. 287, 293 (1926) (“While the title to the measure might be said to be more comprehensive than the body thereof, it is the wording of the body and not that of the title which controls, as it is not necessary that the title shall contain or embody the exact limitations or qualifications contained in the bill itself which are germane to its purposes, if the general subject of the measure is clearly expressed in the title.”)

There is no ambiguity in the enacted language of Mont. Code Ann. § 3-10-117 (2003). And, even if the statutory language in that section were somehow ambiguous, the 2005 legislature repealed Mont. Code Ann. § 3-10-117, leaving in place only the general continuing education requirements found in Mont. Code Ann. § 3-10-203 that apply to all justices of the peace. 2005 Mont. Laws, ch. 557, § 13. A court would not be permitted to add to the statutes provisions that the legislature has omitted. Absent any language suggesting that a justice in a justice's court of record must be a lawyer, a court would be obligated to find that no such requirement exists.

Even if the governing statutes were ambiguous, statutory construction affirms this interpretation. Construction of statutes is to pursue the intention of the legislature if possible. Mont. Code Ann. § 1-2-102 (2005). The 2003 legislation, including the addition of Mont. Code Ann. § 3-10-117 (2003), was designed to allow justice's courts to maintain a record in order to reduce the strain of multiple trials on victims and increase judicial efficiency. Mont. H. Jud. Comm., Hearing for HB 358 (Jan. 28, 2003) (Statement of Rep. Lange). While HB 358 originally contained language that would require justices of the peace serving in justice's courts of record to be lawyers, that section was amended out early in the committee process. Mont. H. Jud. Comm., Executive Action on HB 358 (Feb. 13, 2003); see also Mont. Sen. Jud. Comm., Hearing on HB 358 (Mar. 24, 2003) (Remarks of Justice Johnny Seiffert (requirement in introduced bill that justice in justice's court of record be a lawyer was amended out in the House)).

The 2005 amendments simplified the code regarding justice's courts of record. These amendments repealed Mont. Code Ann. § 3-10-317 (2003), but did not add any other qualifications for a justice in a justice's court of record beyond those required of justices generally. These changes were apparently intended to clarify the absence of any requirement that a justice in a justice's court of record be an attorney. Indeed, when asked in the House Judiciary Committee, whether this change would require that justices of the peace in established justice's courts of record be lawyers, the sponsor of the bill responded that it did not. Mont. H. Jud. Comm., Hearing on HB 367 (Feb. 4, 2005) (remarks of Rep. Parker).

I understand that various arguments have been advanced regarding the constitutionality of the statutes pertaining to justice's courts of record. I express no opinion here as to any questions regarding the constitutionality of the statutes. I hope you find this letter of advice helpful. This letter may not be cited as an official opinion of the Attorney General.

Sincerely,

CHRIS D. TWEETEN
Chief Civil Counsel

cdt/jym